IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

CRIMINAL APPEAL NO.1923 OF 2001

Date of decision :-16.02.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-16.02.2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

CRIMINAL APPEAL NO.1923 OF 2001
(OLD NO. 1050 OF 1983)

Om Prakash Chauhan
S/o Shri Chiranji Lal
R/o Junior Engineer Telegraph
Chandausi
District Moradabad .....Appellant

Versus

State of Uttaranchal .....Respondent

Date :-16th February, 2006

Mr. Mahendra Singh learned counsel for the appellant.
Sri U.K. Uniyal senior advocate assisted by Sri Sobhit Saharia learned counsel for C.B.I.

Hon'ble J.C.S. Rawat, J.

This criminal appeal has been preferred against the judgment and order dated 27.4.1983 passed by Sri J.K. Mathur, the then Special Judge, Anti-Corruption, Dehradun in Criminal Case No.3/1981 State Vs. O.P. Chauhan & another, whereby the appellant was convicted under section 161 I.P.C. and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act and sentenced him to undergo R.I. for a period of one year on each count. A fine of Rs. 500/- was also imposed on the appellant. In default of payment of fine, the appellant would further undergo imprisonment for a period of three months. Both the sentences would run concurrently. However, the co-accused O.P. Sharma was acquitted from the charge leveled against him.

2. Brief facts of the prosecution case are that on 28.3.1978 Dr. V.V.S. Tyagi moved an application Ex.Ka.7 for being given a telephone connection at his residence. In pursuance of the said application, a

demand note amounting to Rs.800/- was issued by the Telephone Department. The said amount was deposited by Onkar Singh Tyagi (PW1)-nephew of Dr. V.V.S. Tyagi. On 6.5.1980, the S.D.O. Telephones directed the appellant-Junior Engineer to submit the feasibility report and the estimate for telephone connection at the residence of Dr. V. V. S. Tyagi. Pursuant to which the appellant-Junior Engineer gave an estimate Ex.ka.6. The appellant visited the house of the Dr. V. V. S. Tyagi in the month of June, 1980 and asked him that his interest should also be kept in mind for installing the telephone connection. The appellant installed the telephone line at the residence of Dr. V.V. S. Tyagi, but the telephone was not connected. On 4.8.1980 at about 2pm, the appellant went to the farm of Onkar Singh Tyagi and demanded Rs.1000/- as bribe for providing telephone connection. Onkar Singh Tyagi (PW1) told that he had no money at that time. Appellant told Onkar Singh Taygi (PW1) that he would come after two days and would take Rs.500/- and remaining amount would be paid after making connection.

3. On 5.8.1980 the complainant went to the office of CBI, Dehradun and gave a written report Ex.ka8 and the Deputy S.P.-S.R. Jaiswal (PW2) recorded the FIR and ask him to meet at his farm on the next day. S.R. Jaiswal(PW2) alongwith Inspector Joshi, one head constable and one constable reached at Hapur in the morning of 6.8.1980. S.R. Jaiswal (PW2) contacted with the Station Master, Hapur in order to obtain a witness for the said raid. Station Master deputed one-Udai Vir Singh (PW3), who was the ticket collector, to accompany him. S.R. Jaiswal (PW2) then went to the F.C.I. colony and met with P.Singh, District Manager,

Food Corporation of India. S.R. Jaiswal gave requisition to the District Manager to depute any person as witness for the said raid. On this, Mahesh Chand Tyagi (PW5) was deputed to accompany.

4. Thereafter, S.R. Jaiswal (PW2) and the trap party went to the farm of the complainant to organize a raid. Onkar Singh Produced 5 Currency notes of denomination of Rs.100/- each. The said notes were treated with phenolphthalein powder and the currency notes were recorded and gave directions about the manner in which the amount should be passed on to the appellant on his demand. The hands of all the persons were washed. Details about the manner of giving signal to the raiding party were also given to the complainant. Mahesh Chand Tyagi (PW5) was directed to remain with the complainant for giving signal to the raiding party.

5. The appellant alongwith O.P. Sharma, who has been acquitted by the trial court, came on a motorcycle at about 12:45pm. The appellant and the co-accused came and sat with the complainant and started talking. After sometime, the appellant asked the complainant to give him Rs.500/- as bribe. The complainant gave him the amount and said that the telephone should be installed. The appellant told that it would be installed and subsequently the co-accused said that what was the use of giving money if the telephone would not installed. The appellant received the money and gave it to the co-accused, who kept it in the pocket of his shirt. Thereafter, they started walking towards their motorcycle. The raiding party came there and S.R. Jaiswal (PW2) asked the co-accused to take out Rs.500/-, which was given by the complainant as bribe. O.P. Sharma-accused gave the money to Sri Jaiswal,

Who checked the numbers and tallied with the numbers of the memo. The hands of O.P. Sharma were washed in a solution of sodium carbonate, which turned pink. The pocket of the shirt of O.P. Sharma on being washed with the sodium carbonate solution also turned pink. A fresh solution was made and the right as well as the left hand fingers of the appellant were got dipped into sodium carbonate solution which turned pink. The solutions were sealed at the spot. Shirt and the money recovered from the possession of the co-accused were also sealed. The recovery memo were prepared and signatures of the raiding party were obtained on the memo. The investigation was taken up as usual which culminated into the submission of the chargesheet against both the accused persons.

6. Charge was framed against both the accused persons. Both the accused persons denied the charges and claimed the trial.

7. The prosecution in support of its case examined seven witnesses. Onkar Singh Tyagi (PW1), S.R. Jaiswal (PW2), Udai Vir Singh(PW3) and Mahesh Chand Tyagi(PW5) were the witnesses of occurrence and they saw the entire proceeding of the raiding party. Harminder Singh (PW4) was the Section Officer in the office of S.D.O. Telephones and he also proved certain documents of his department, which were filed by the prosecution in connection with the telephone installation. O.P. Garg (PW6), Director, Tele-Communication has accorded the sanction to prosecute the case. R.K.Bhakta(PW7) conducted the investigation.

8. In the statement recorded u/s 313 Cr. P.C. the accused persons denied the prosecution case and stated that they have been falsely implicated in this

Case. The appellant has admitted that he was a junior engineer at the relevant time in Syana Group Exchange. He has submitted the feasibility report and estimate for installation of telephone at the farm of Dr.V.V.S. Tyagi. He has also admitted that the telephone connection was sanctioned and further stated that it was his duty to install the telephone connection if it is sanctioned from the competent authority. He placed the telephone lines for providing the connection in pursuance of the orders of the superior authority. The rest of the allegations made by the prosecution had been denied by him. He has also stated that the feasibility report and estimate was submitted by him in which it has been mentioned that there was 5 $^{1}/_{2}$ km distance between the farm and the place from where he has to provide connection. But, the complainant wanted that the distance should be only 5km in order to save the charges. When the appellant did not circumspect with the request, the complainant annoyed with him. The appellant further stated that S.R. Jaiswal (PW2) and Inspector Joshi used to visit and make use of telephone at Hapur exchange. But, subsequently he did not permit them to make use of telephone. Therefore, they in collusion with the complainant concocted the false case and he has been falsely implicated in this case. He has further stated that he was arrested from Babugarh Exchange and he was asked to make signatures on the blank papers under the threat of being assaulted and he was not permitted to read the paper and he merely signed on it.

9. The learned trial court after appraisal of the evidence on record found the appellant guilty under section 161 I.P.C. and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act and

convicted and sentenced the appellant as mentioned above. Co-accused O.P. Sharma was acquitted from the charge by the learned trial court.

10. I have heard Sri Mahendra Singh learned counsel for the appellant and Sri U.K. Uniyal senior advocate assisted by Sri Sobhit Saharia learned counsel for the C.B.I., and perused the evidence on record.

11. Now, it has to be seen whether the prosecution has proved that the appellant demanded Rs.1000/- as bribe for making connection on 4.8.1980. It is admitted by both the parties that the appellant was a public servant at the relevant time. It is also admitted by both the parties that Dr. V.V.S. Tyagi moved an application for installation of telephone connection. Thereafter, the demand note was prepared by the office. In pursuance of the said demand not, a sum of Rs.800/- was deposited. It is also admitted that the feasibility report and the estimate was submitted to the S.D.O. by the appellant. It is also admitted that the S.D.O. directed the appellant to provide telephone connection and the complainant also deposited the amount as per the estimate submitted by the appellant. It is also admitted that only the line was given and installation of telephone connection was to be provided to the complainant. It was disputed that whether the appellant demanded the money from the complainant as bribe or not. The prosecution in support of his contention examined Onkar Singh Tyagi (PW1) who has stated as indicated above.

12. Learned counsel for the appellant contended that the complainant had enmity with the appellant and therefore he was falsely implicated in this case. The complainant wanted to reduce the distance from 5 ½ km to 5km so that the charges may be saved. When the

appellant did not care to the said request, the complainant concocted the false case with the help of S.R. Jaiswal(PW2), Deputy S.P., C.B.I. It was further contended that the appellant was arrested from Babugarh Exchange and the prosecution is mala-fide. Learned counsel for the C.B.I. refuted the contention. Perusal of the record reveals that the feasibility report and estimate for making telephone connection was submitted by the appellant on 31.3.1980 and the amount was deposited by the complainant on 10.4.1980 and thereafter the telephone line was placed and telephone connection was not provided. If the contention of the appellant is taken up proved, the appellant should have demanded money at the time of preparation of estimate and feasibility report. After preparation of the same, the complainant deposited the money and the appellant installed the line. Thus the so-called enmity against the appellant is not probable. The contention of the defence is not tenable.

13. Learned counsel for the appellant further contended that the evidence of Onkar Singh Tyagi (PW1) is not cogent and credible. The application for making the telephone connection does not bear the signature of Dr. V.V.S. Tyagi. He further pointed out that Onkar Singh Tyagi (PW1) has admitted that he made his signature on the application. Learned counsel for the appellant contented that this fact further makes it suspicious. Learned counsel for the C.B.I. refuted the contention. Perusal of the record reveals that the application was given in the month of March 1980 for telephone connection. In pursuance of the said application, a demand note was issued by the department. It was not disputed by the appellant and the telephone department that Dr. V.V.S. Tyagi did not

require telephone connection and the signature on the application is forged. S.D.O. passed the order to prepare the estimate and feasibility report. The appellant as well as the S.D.O. or any other concerning person did not object that the application is bogus and false. The line for installation of telephone was also completed and the money was deposited as per the estimate provided by the appellant. In these circumstances, it cannot be said that the telephone connection was not required to Dr. V.V.S. Tyagi and the application does not bear signature. Even the application does not bear the signature or the signature was made by some other person, the person who did not deny his signature it cannot be said that it is forged one. The presumption is that the application has been submitted by the person whose signature is made on the application unless it is rebutted by the cogent evidence. Therefore, the contention supported by the learned counsel for the appellant is not tenable.

14. The prosecution in support of its case examined two independent witnesses i.e. Udai Vir Singh (PW3) and Mahesh Chand Tyagi (PW5). They narrated the entire incident as indicated above. Udai Vir Singh (PW3) has stated that he was behind the gate alongwith the raiding party and he saw the subsequent proceedings. He could not hear the talk held between the complainant and the accused persons. Mahesh Chand Tyagi (PW5) was sitting with the complainant and the appellant at the time of incident. According to him, Onkar Singh Tyagi (PW1) asked the appellant to install the telephone and the appellant told that it would be installed. Then they went further and he could not listen to their conversation, but saw Onkar Singh Tyagi giving money to the appellant and the

appellant gave it to the co-accused O.P. Sharma who kept it in his pocket. Learned counsel for the appellant contended that Udai Vir Singh (PW3) and Mahesh Chand Tyagi (PW5) were interested witnesses and their evidence in not reliable. These two witnesses were the employees of the Central Government and were under the control and influence of the CBI. Learned counsel for the CBI refuted the contention and contented that S.R. Jaiswal (PW2) collected two witnesses – one from railway department and other from Food Corporation of India (FCI). Learned counsel for the appellant tried to point out that Mahesh Chand Tyagi (PW5) is related to the complainant and as such he is an interested witness in prosecuting the case. The suggestions were put to the said witness that he is related to the complainant. The defence has tried to show that the CBI had asked for Mahesh Chand Tyagi (PW5) as a witness by name. When PW5 appeared in the cross examination, he denied this fact. Perusal of the application submitted to Deputy Manager, F.C.I. by S.R. Jaiswal (Pw2) reveals that no specific name was mentioned in that application. There is no iota of evidence on record which shows that Mahesh Chand Tyagi (PW5) is related to the complainant. The defence made a lengthy cross-examination, but nothing could be elicited from the testimony of Mahesh Chandra Tyagi (PW5). Therefore, the contention supported by the learned counsel for the appellant has no force.

15. The evidence of Onkar Singh Tyagi (PW1) and S.R.Jaiswal (PW2) with regard to the incident is credible and cogent. The defence could elicit anything from their evidence. The evidence of Udai Vir Singh(PW3) and Mahesh Chand Tyagi(PW5) further corroborates the evidence of the prosecution. It is

amply proved by the prosecution evidence that the appellant made demand of the bribe and he received the money which was handed over to the co-accused O.P. Sharma. Therefore, the contention of the defence is not tenable.

16. It was further contended that both the witnesses did not ask the PW2 as to why they are being taken by him. It was further contended that the conduct of the witnesses is unnatural. If they would have been asked to accompany him, it was their natural conduct to ask as to why they are being taken. Learned counsel for the CBI refuted the contention. Perusal of the record reveals that the station master asked Udai Vir Singh (PW3) to accompany with S.R.Jaiswal (PW2). Mahesh Chand Tyagi (PW5) did not ask the reason why he has been taken. It is pertinent to mention here that it is always kept secret when the CBI conducts the raid. It cannot be said that the conduct of these witnesses are unnatural. The evidence of the prosecution witnesses is consistent. The prosecution has also adduced the evidence of S.R.Jaiswal (PW2), who has stated the entire incident as narrated above. He conducted the raid. He has stated that the demand was made and the money was handed over to the appellant, who gave it to the co-accused O.P. Sharma. The hands of O.P.Sharma were washed in a solution of sodium carbonate, which turned pink. The pocket of the shirt of O.P.Sharma on being washed with the fresh sodium carbonate solution also turned pink. The right as well as the left hand fingers of the appellant were got dipped into sodium carbonate solution which turned pink. The entire incident has been corroborated by the evidence of PW3, PW4 and PW5. Learned counsel for the appellant taken me to the entire cross-examination.

The defence could not elicit from the testimony of the witnesses. Witnesses were cross-examined at length but they remained intact regarding the incident of trap.

17. It was further contended that the money was recovered from the possession of the co-accused O.P.Sharma and he was acquitted from the charge by the trial court. As such, the appellant is entitled to be acquitted on this count. Learned counsel for the CBI refuted the contention. It has come in the evidence that the money was taken by the appellant, who gave it to the co-accused. As such, the acceptance of the money is established from the evidence. Witnesses of the trap further fortifies this fact that the money was demanded by the appellant and he received the money. Therefore, the contention supported by the learned counsel for the appellant is not tenable.

18. Learned counsel for the appellant further contended that neither the chemical examiner's report nor the fingerprints' report has been obtained by the CBI. As such, the entire evidence is unbelievable. Learned counsel for the CBI refuted the contention. The hands of all persons were washed. The hands of the appellant were got dipped into sodium carbonate solution which turned pink. The solution of sodium carbonate was not challenged during the cross-examination, therefore, the statement of the witnesses to that effect did not require any corroboration from the chemical examiner. Perusal of the record reveals that the report of the chemical examiner is not the substantive piece of evidence. The oral testimony of the witnesses is credible and cogent. All the witnesses have categorically stated that the currency notes were treated with phenolphthalein powder and the numbers of currency notes were recorded in the memo. After

the arrest of the accused, PW2 checked the numbers and tallied with the numbers of the memo. The hands of O.P.Sharma were washed in a solution of sodium carbonate, which turned pink. The pocket of the shirt of O.P.Sharma on being washed with the fresh sodium carbonate solution also turned pink. A fresh solution was made and the right as well as the left hand fingers of the appellant were got dipped into sodium carbonate solution which turned pink. The solutions were sealed at the spot. The evidence of all the witnesses is consistent and nothing could be elicited. As such, there was no necessity to obtain the expert reports. The evidence of S.R.Jaiswal (PW2) was also criticized on the ground that he and Joshi Inspector had a grudge against the appellant. S.R.Jaiswal (PW2) and Inspector Joshi used to visit at Hapur and make use of telephone at Hapur exchange. But, subsequently he did not permit them to make use of telephone. Therefore, they in collusion with the complainant concocted the false case and he has been falsely implicated in this case. The appellant has not put any specific suggestion to the witnesses with regard to the said telephone calls. The appellant had not suggested any specific time and date when he refused to make use of telephone calls. Such vague suggestions have no consequence. The evidence of S.R.Jaiswal(PW2) is consistent and reliable as stated above. Therefore, the contention supported by the learned counsel for the appellant is not tenable.

19. Learned counsel for the appellant further contended that some material witnesses i.e. Dr. V.V.S. Tyagi, Sri H.S.Nirmal S.D.O. Telephones, Sri Bhim Singh Bisht Constable, Sri Hari Datt, Sri M.C. Joshi, Inspector, Sri Yadav PNT etc. were not examined. Learned counsel for the CBI refuted the contention and

contended that they are not the material witnesses. As I have already pointed out that the department has accepted the application of Dr. V.V.S. Tyagi for installation of telephone connection. Whereas H.S.Nirmal is concerned, he was S.D.O. and he was the sanctioning authority for the prosecution of the co-accused, who has already been acquitted by the trial court. Whereas Sri Bhim Singh Bisht, Sri Hari Datt and M.C. Joshi, Inspector are concerned, they are the members of the raiding party. So far as Sri Yadav is concerned, it has not been pointed out as to why he had to be examined. I am of the view that the evidence of Sri Yadav is not required in this case. Moreover, it is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. It is to be seen that the evidence available on record is otherwise satisfactorily in nature and can be said to the trustworthy and increase in the number of witnesses cannot be turned up as the requirement of the case. The prosecution has adduced the evidence of other witnesses, who have narrated the whole incident. As such, those witnesses are not required to be examined by the prosecution. Therefore, the contention supported by the learned counsel for the appellant has no force.

20. Learned counsel for the appellant further contended that there are contradictions in the testimony of the witnesses. It was pointed out that the witnesses had contradicted the evidence of each other as to how they left the place of incident. The learned counsel for the CBI refuted the contention. There is no contradictions in the testimony of the witnesses.

Whereas the contradictions with regard to the leaving the place is concerned it has no consequence in the prosecution. The contradictions which has been pointed out are immaterial and these are natural contradictions as the witnesses were examined after a lapse of time. Therefore, the contention supported by the learned counsel for the appellant is not tenable.

21. In view of the above, I am of view that the prosecution has been able to establish that the appellant demanded the money as bribe. A sum of Rs.500/- was handed over to the appellant as bribe and then the appellant gave it to the co-accused O.P. Sharma, who kept in his pocket. The said amount was recovered from the possession of the co-accused O.P. Sharma.

22. I have already indicated above that the entire oral evidence is cogent and credible. Further the recovery of tainted currency notes is corroborated by Ex.ka.11. It is further corroborated by the fact that the hands of the appellant as well as the co-accused O.P.Sharma were washed in a solution of sodium carbonate, which turned pink. The pocket of the shirt of O.P.Sharma on being washed with the fresh sodium carbonate solution also turned pink. It further fortifies the prosecution case that the recovery of such currency notes were made and it was taken by the appellant, who further gave it the co-accused. After arrest of the accused persons, PW2 checked the numbers of the currency notes and tallied with the numbers of the memo.

23. It was pointed out that there is a presumption under section 4(1) of the Prevention of Corruption Act, 1947. From a bare reading of Section 4(1), it is seen that the presumption arising under section 4 is a rebuttable presumption and that presumption arises in

this case falling under section 161 IPC. The prosecution has led the evidence that the tainted currency notes were recovered from the possession of the co-accused O.P.Sharma and the money was received by the appellant, who gave it to the co-accused. The prosecution has also established that the money was received by the appellant as a gratification other than the legal reward to install the telephone connection. The prosecution has established that the said notes were recovered, but the defence has not rebutted as to how these currency notes came to him. There is no explanation for the same. The presumption goes in favour of the prosecution.

24. In view of the above discussion, I am of the view that the prosecution has established the guilt beyond any reasonable doubt against the appellant. I find that the learned trial court has rightly convicted and sentenced the appellant and there is no infirmity in the judgment passed by the trial court. Hence, the appeal is dismissed and the conviction and sentence awarded by the Trial court are confirmed.

25. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months.

(J.C.S.Rawat, J.)

Dated 16.02.2006
LSR